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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-920

BERNARD W. McNAMARA, *et al.*,

Petitioners,

v.

ROBERT JOHNSTON, *et al.*,

Respondents.

PETITIONERS' REPLY BRIEF

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Respondents' opposition brief presents the argument that plaintiffs are not entitled to the statutory relief provided for under section 501(b) of the LMRDA because the United Auto Workers Union has established a rebate procedure whereby individual union members who object to political expenditures from union funds can request a proportionate rebate of their union dues. In this connection respondents' brief makes reference to the *obiter dictum* comment of the Circuit Court that ". . . union members such as plaintiffs who do not avail themselves of this rebate procedure appear tacitly to

consent to CAP expenditures and to be in no position to claim a breach of trust". 522 F.2d at 1166.

This argument reflects a complete misunderstanding and misrepresentation of the purpose of the plaintiffs' action here. The plaintiffs here are not seeking to obtain a refund of any money for themselves as individuals, but rather are seeking a statutory remedy under 29 USC section 501 to secure an accounting and appropriate relief "for the benefit of the labor organization and its members". The suit which they have filed is a suit on behalf of their union, UAW Local 558, and its entire membership, to prevent diversion of union funds into political campaigns and ideological causes contrary to the objections of an overwhelming majority of the union's members expressed by a referendum vote of the full membership of the union.[1]

The text of the referendum resolution adopted by the full membership of Local 558 is set out in the opinion of the Circuit Court. (522 F.2d at 1159; Petition, Appendix B, page 3c.) This resolution reads:

> "Resolution – the membership of UAW Local 558, party to a Union Shop, deny use of all or any part of their dues money in support of any political candidate, political organization, state or federal legislation, any organization or group engaged in violence or using the threat of violence, the illegal seizure or destruction of property, engaged in social disorder, promoting racial agitation, and any organization or group that

[1] This is an entirely different situation than that presented in *Machinists Union v. Street*, 367 US 149 (1961), and *Railway Clerks v. Allen*, 373 US 113 (1963), where the plaintiffs were held by this Court to be suing only on behalf of themselves as individuals to obtain relief from compelled payment of union dues.

> preaches, promotes or identifies with Marxist or communist ideology. Furthermore, this membership does not authorize any person, organization or group to act as spokesman for UAW Local 558 or any political endorsement, legislative endorsement, social problem or movement of any kind unless or until the membership has clearly made such an endorsement by voting 68% in support by secret ballot using the dues check-off lists to verify voters eligibility.

After the respondent union officers acted in defiance of this unequivocal directive of the union members, the members sought recourse under section 501(b) to secure an accounting and to restrain continued violations, which included political campaign contributions to candidates for federal office in violation of 18 USC section 610. The respondent union officers have at no time disclaimed that they make these illegal contributions from union funds, but assert that they are authorized under general clauses contained in the UAW Constitution and convention proceedings. The Circuit Court's holding that the illegal contributions are sanctioned by the union Constitution and convention proceedings, and thus do not involve a breach of fiduciary duty by the union officers under section 501 of the LMRDA, is in direct conflict with the decision of the Court of Appeals for the District of Columbia Circuit in *United States v. Boyle*, 482 F.2d 755; cert. denied, 414 US 1076, 38 L. Ed. 2d 438 (1974).

The UAW also argues that the *Boyle* case is inapposite because although authorization by the principal is no defense in a criminal case, "it will defeat civil recovery by the principal." (Brief p. 9). This argument, which is of dubious validity at best, is

extraneous and irrelevant in the present situation. Section 501(a) of the LMRDA was adopted for the purpose of protection of the interests of union members, not the union governing body, and expressly provides that: "A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person [officer, agent, shop steward or other representative] of liability for breach of the duties declared by this section shall be void as against public policy."

As a further ground for its decision the Circuit Court held, (citing *Cort v. Ash*, 422 US 66, 45 L.Ed. 2d 26 (1975)), that the Federal Election Campaign Act Amendments of 1974 vested the Federal Election Commission with primary jurisdiction respecting civil enforcement of 18 USC section 610, and hence requires dismissal of plaintiffs' complaint for lack of federal jurisdiction in the district courts to enjoin illegal contributions to political campaigns for federal office. 522 F.2d at 1162.

This ground of the Circuit Court's decision is clearly subject to reversal by virtue of the subsequent decision of this Court in *Buckley, et al. v. Valleo*, No. 75-436, decided January 30, 1976, holding that the Federal Election Commission was improperly constituted under the statute, and that the provisions of the Act vesting in the Commission primary responsibility for conducting civil litigation in the courts of the United States for violations of 18 USC section 610 are in conflict with Article II, cl. 2, section 2, of the Constitution.

CONCLUSION

This case clearly presents important questions of law concerning the protection of the rights of union members, and enforcement of the fiduciary obligation of union officers to use union funds solely for the benefit of the union and its members. In section 501(b) of the LMRDA Congress expressly authorized the action brought by plaintiffs here. The Circuit Court was clearly in error in holding that remedies authorized under section 501(b) are precluded by the Federal Election Campaign Act Amendments of 1974 and by general exculpatory clauses contained in the UAW Constitution and convention proceedings.

Respectfully submitted,

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